



To Appoint *Shariah* Committee Member as an Independent Non-executive Director of Islamic Banks in Malaysia: Issues and Challenges

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ABSTRACT

Shariah compliance is a vital element in the operation of Islamic banking business carried out by Islamic banking institutions. In order to strengthen the *Shariah* governance, the existing legislations regulating Islamic banking business in Malaysia encourage the Islamic financial institutions and Islamic banks in particular, to appoint a member of its *Shariah* committee (SC) as a member of the Board of Directors (BoD). This article scrutinizes on this issue and the challenges which probably faced by the appointed SC member as member to the BoD of Islamic Financial Institutions. The study found that the suggestion is good to bridge the gap between the SC and the BoD in ensuring *Shariah* compliance. However it also may invite several legal conflicts and challenges to be faced by the appointed *Shariah* member if the Islamic banks.

Keywords: *Shariah* Committee, *Shariah* Advisory, *Shariah* Governance, Independent Non-executive Director, Islamic Bank
JEL Classifications: G2

1. INTRODUCTION

Adherence to the *Shariah* principles in Islamic financial activities include adherence to the basic prohibitions such as prohibition of usury (*riba*), prohibition of uncertainty (*gharar*) and prohibition of games of chances (*maisir*) (Hassan, 2011). Apart from the basic prohibitions, the Islamic banks should conform to certain Islamic business ethics and norms such as the principle of justice and fair dealing, fulfilling the covenants and paying liabilities, mutual cooperation and removal of hardship, free marketing and fair pricing and freedom from detriment (*darar*) (Ayub, 2007). *Shariah* supervision is a vital element for the Islamic banks to ensure that its operations and Islamic financial business activities always comply with *Shariah* principles. The mandate to ensure the *Shariah* compliance relies on the *Shariah* committee (hereinafter referred to as "SC") established by Islamic banks.

SC can be referred as people entrusted with ensuring the compliance aspects of particular products and instruments used in the Islamic finance industry which broadly includes banking, capital market and *takaful* (Laldin, 2008). The SC is a key organ of governance and becomes part of the corporate governance framework in an Islamic bank (Clode, 2002). It is crucial to ensure that the institutions comply with the Qur'anic sanctions and to prevent such institution from involvement in any unethical investment such as investment in business related to gambling, alcohol or pornography (Brown et al., 2007). SC will act as independent *Shariah* auditors and advisors to the banks, and are involved in vetting all new contracts, auditing existing contracts, approving new products developments and also oversees the collection and distribution of alms (*zakat*) (Latifa and Lewis, 2007).